

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0601
Motor Vehicle Excise Tax
For The Tax Periods: 10/97 through 8/98**

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ISSUES

I. **Motor Vehicle Excise Tax**: Imposition

Authority: IC 6-6-5-2, IC 9-18-2-1, IC 9-13-2-78

Taxpayer protests the assessment of motor vehicle excise tax.

II. **Negligence Penalty**: Imposition

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2(c)

Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayer is the owner of a 1994 Plymouth. Taxpayer was assessed motor vehicle excise tax for the above tax period.

Additional facts will be provided as needed.

DISCUSSION

Indiana imposes an excise tax upon motor vehicles. Indiana imposes an annual license excise tax upon vehicles, which tax shall be in lieu of the ad valorem property tax levied for state or local purposes, but in addition to any registration fees imposed on such vehicles. IC 6-6-5-2(a).

Within sixty (60) days of becoming an Indiana resident, a person must register all motor vehicles owned by that person that will be operated in Indiana. IC 9-18-2-1. Pursuant to IC 9-13-2-78, "Indiana resident" is defined as a person who is *one* of the following:

- (1) A person who has been living in Indiana for at least one hundred eighty-three (183) days during a calendar year and who has a legal residence in another state. However, the term does not include a person who has been living in Indiana for any of the following purposes:

- (A) Attending an institution of higher education.
- (B) Serving on active duty in the armed forces of the United States.
- (2) A person who is *living in Indiana* if the person has no other legal residence.
- (3) A person who is registered to vote in Indiana.
- (4) A person who has a child enrolled in an elementary or secondary school located in Indiana.
- (5) A person who has more than one-half (1/2) of the person's gross income derived from sources in Indiana ... However, a person who is considered a resident under this subdivision is not a resident if the person proves by a preponderance of the evidence that the person is not a resident under subdivisions (1) through (4).

Emphasis added.

In 1997, taxpayer filed an Indiana Part-Year Tax Return on which he indicated that he was a part-year resident of Indiana from October 17, 1997 to December 31, 1997. Taxpayer lived and worked in Indiana during this time. Furthermore, taxpayer had no other legal residence during this time. Thus, taxpayer is liable for Motor Vehicle Excise Tax for October 17, 1997 through December 31, 1997. Taxpayer asserts that he and his family lived in temporary housing during this time and through May 1998. Yet, the fact that taxpayer has lived in Indiana, without legal residence in another state, since October 17, 1997 is sufficient basis for the tax.

FINDING

Taxpayer's protest is denied.

II. Negligence Penalty: Imposition

DISCUSSION

Indiana Code 6-8.1-10-2.1(d) allows a penalty to be waived upon a showing that the failure to pay the deficiency was due to reasonable cause. Department regulation 45 IAC 15-11-2(c) requires that in order to establish reasonable cause, the taxpayers must show that they exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed. The Department finds that the taxpayer demonstrated reasonable cause for his failure to pay tax.

FINDING

The taxpayers' protest is sustained. The penalty imposed on the taxpayer will be waived.